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Error to Circuit Court, Botetourt County.

Action by the Norfolk & Western Railway Company against James Mundy. There was a judgment for plaintiff for less than the amount claimed, and it brings error. Reversed.

*T. W. Reath, M. McCormick, and E. M. Pendleton*, for plaintiff in error.

*Benj. Haden*, for defendant in error.

CAMP MFG. CO. v. COMMONWEALTH et al.

Nov. 26, 1909.

[66 S. E. 224.]

**1. Taxation (§ 318\*)—Time of Assessment—Five-Year Period—Adoption of Previous Assessment.**—County assessors having in 1905 assessed standing merchantable timber owned by plaintiff pursuant to Code 1904, § 437, providing for the appointment of assessors to assess all land in the year 1905 and every fifth year thereafter, as required by Const. § 171 (Code 1904, p. cclxiii), an assessment of such timber in 1908 by merely following the assessment of 1905 in making out the land books on which the taxes were extended, as required by Code 1904, § 509, was legal, independent of Act March 12, 1908 (Acts 1908, p. 331, c. 220), requiring the commissioners of revenue to assess on or before May 15, 1908, all standing merchantable timber owned separately from the land, and even if that act contravened Const. § 171.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 530, 531; Dec. Dig. § 318.\* 13 Va.-W. Va. Enc. Dig. 99.]

**2. Constitutional Law (§ 46\*)—Determination of Constitutional Questions—Necessity.**—Where an assessment of taxes was valid independent of a certain statute, the constitutionality of such statute will not be determined in an action to avoid such assessment.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 43-45; Dec. Dig. § 46.\* 13 Va.-W. Va. Enc. Dig. 105.]

Error to Circuit Court, Brunswick County.

Motion by the Camp Manufacturing Company against the Commonwealth and another to obtain exoneration from the payment of taxes. Order denying relief, and plaintiff brings error. Affirmed.

See, also, 63 S. E. 978.

*E. R. Turnbull, Jr.*, for plaintiff in error.

*The Attorney General and E. P. Buford*, for defendant in error.

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.